

### **OPENING STATEMENT**

1. Arguing the law
2. Discussing inadmissible facts
3. Misstatements of the law
4. Expressing personal opinion on the merits
5. Appealing to sympathy or prejudice

### **WITNESS QUALIFICATIONS**

1. Competency to Testify (prior to swearing in witness)
2. Privilege
3. Non-qualified expert

### **OBJECTIONS DURING DIRECT EXAMINATION**

1. Leading
2. Not relevant
3. Hearsay
4. Calls for Speculation
5. Calls for a narrative answer
6. Asked and answered
7. Cumulative
8. Prejudicial effect outweighs probative value
9. Assumes facts not in evidence
10. Lack of personal knowledge (no foundation)
11. Misstatement of the record (misquoting the witness)
12. No proper foundation (specify missing elements)

### **OBJECTIONS DURING CROSS-EXAMINATION**

1. Beyond the scope of direct
2. Hearsay
3. Asked and answered
4. Assumes facts not in evidence
5. Compound question
6. Misstatement of the record (misquoting the witness)
7. Argumentative
8. Improper impeachment
9. No good faith basis for the question

### **DOCUMENTS**

1. Identification
2. Relevancy
3. Authentication
4. Foundation (witness or procedure)
5. Hearsay
6. Privilege
7. Best Evidence

### **CLOSING ARGUMENT**

1. Facts not in evidence
2. Misstatement of the facts in evidence
3. Misstatement of the law
4. Stating personal opinion on the merits
5. Asking jurors to place themselves in the party's position (Golden Rule argument)
6. Improper comment on Defendant's right to silence
7. Improper comment on settlement discussions
8. Unduly prejudicial/inflammatory
9. Appealing to sympathy or prejudice

### **JURY INSTRUCTIONS**

1. Misstating the facts of the case
2. Misstatement of the law
3. Unduly placing weight on certain legal issues or evidence
4. Failing to give instructions consistent with theory of the case
5. Failing to give requested instructions
6. Confusing/ambiguous

### WHEN IN DOUBT:

When you are uncertain about which state and/or federal grounds apply to your objections, better to be too broad than too narrow. No one ever failed to preserve a claim by objecting on too many grounds. The chart below provides a summary of the sources of individual rights to help you determine which grounds to assert as the bases for your objections.

Protected Right	Federal Constitutional Ground	State Constitutional Ground
Speech and Press	1st Amendment	Article I, section 2
Illegal Search	4th Amendment	Article I, section 10
Self-Incrimination	5th Amendment	Article I, section 12
Grand Jury	5th Amendment	Article I, section 11
Double Jeopardy	5th Amendment	Article I, section 12
Due Process	5 <sup>th</sup> & 14 <sup>th</sup> Amendment	Article I, section 3
Speedy Trial	6 <sup>th</sup> Amendment	Article I, section 14
Jury Trial	6 <sup>th</sup> Amendment	Article I, section 14
Public Trial	6 <sup>th</sup> Amendment	Article I, section 14
Compulsory Process	6 <sup>th</sup> Amendment	Article I, section 14
Confrontation & Cross-Examination	6 <sup>th</sup> Amendment	Article I, section 14
Assistance of Counsel	6 <sup>th</sup> Amendment	Article I, section 14
Right To Present A Defense	6 <sup>th</sup> Amendment & 14 <sup>th</sup> Amendment due process clause	Article I, section 14
Excessive Bail	8 <sup>th</sup> Amendment	Article I, section 15
Cruel & Unusual Punishment	8 <sup>th</sup> Amendment	Article I, section 15
Equal Protection	14 <sup>th</sup> Amendment	Article I, section 3

## Objections Checklist

### Objections to witness questions and answers

#### *(Substantive objections)*

Irrelevant / immaterial - 401-402  
Violates character trait rules - 404-405, 608(a)  
Violates other acts rule - 404(b), 608(b)  
Violates habit rule - 406  
Violates policy exclusion rules - 407-411  
Violates sexual assault rules - 412-415  
Violates privileges rules - 501  
Unfairly prejudicial / waste of time - 403  
Hearsay - 801-807

#### *(Form and procedure objections)*

Witness incompetent - 601  
No first-hand knowledge - 602  
Improper lay witness opinion - 701  
Misstates / mischaracterizes evidence  
Assumes facts not in evidence  
Leading - 611(c)  
Calls for narrative answer  
Asked and answered / repetitive / cumulative - 403  
Speculative  
Confusing / misleading / vague / ambiguous  
Compound  
Augumentative  
Embarrassing / harassment - 611(c)  
Unresponsive answer  
No question pending  
Improper refreshing recollection - 612  
Improper impeachment / failure to prove up  
Beyond the scope - 611(b)  
Improper rehabilitation - 613, 801  
Improper rebuttal  
Unfair  
Violates original documents rule - 1001-1004  
Calls for testimony barred by pretrial order



## **Objections to expert witness questions and answers**

Not proper subject for expert testimony - 702  
Expert not qualified - 702  
No foundation / testimony not relevant or reliable - 702  
Underlying tests not properly done  
Sources relied on improper - 703  
Opinions and bases not properly disclosed - FRCP 26(a)(2)  
Bases for opinions inadmissible - 703  
Improper form for opinions - 702  
Improper ultimate issues testimony - 704  
Improper hypothetical  
Improper use of treatise on direct or cross - 803(18)

## **Objections to exhibits**

Improper foundation witness  
Improper foundation procedure  
No foundation  
Irrelevant / immaterial - 401-402  
Hearsay - 801-807  
Record not trustworthy 803(6)  
Record contains double hearsay / hearsay within hearsay - 805  
Record contains inadmissible expert opinions and conclusions  
Contains inadmissible matter (insurance, etc.)  
Violates original documents rule - 1001-1004  
Reading from / showing exhibit not in evidence  
Improper marking of exhibit  
Reading from exhibit unfairly / out of context - 106

## **Objections to opening statements**

Mentions inadmissible evidence  
Mentions unprovable evidence  
Arguing  
Stating personal opinions  
Discussing the law  
Mentioning the opponent's case  
Appeals to sympathy or prejudice

## Objections to closing arguments

Mentions unadmitted evidence

Misstates / mischaracterizes evidence

Improper comment on missing evidence

States personal opinions

Appeals to sympathy or prejudice — *unduly prejudicial / Inflammatory*

Improper argument of / misstates the law

Improper damages argument

Argues consequences of verdict

Improper rebuttal argument

OBJECTION	MRE
Ambiguous Question	611a (a)
Argumentative	611 (c)
Asked and Answered	611 (a)
Assumes Facts not in Evidence (but experts, 703)	611 (a)
Authentication	
Inadequate	901
Self-authentication inadequate	902
Best Evidence	1002
Beyond the scope of direct	611 (b)
Bolstering	608 (a)
Character evidence	
Improper to impeach	608
Improper to prove facts	404
Compound Question	611 (a)
Confessions	304
Rights warnings	305
Conviction, prior to impeach	609
Cumulative	611 (a)
Degrading Question	611 (a), 303
Experts, no foundation	703
Eyewitness identification	321
Facts not in evidence (but experts, 703)	611 (a)
Foundation	
Authentication inadequate	901
Experts	703
Self-authentication defective	902
Harassing Question	611 (a), 303
Immunity, failure to disclose	301 (c)(2)
Leading	611 (c)
Member as witness	606 (a)
Military judge as witness	605 (a)
Misquoting a witness	611 (a)
Narrative Response	611 (a)
Oath, failure to take	603

OBJECTION	MRE
Opinion, lay opinion improper	701
Personal knowledge, lack of	602
Prejudicial (unfairly prejudicial, relevant evidence)	403
Prior conviction to impeach	609
Prior statement by witness, improper use	613
Privileges	
Attorney/client	502
Deliberations	509
Identification of informants	507
Classified information	505
Clergy	503
Commenting upon	512
Government information	506
Husband/wife	504
Mental examination of accused	302
Patient/Physician	512
Self-incrimination	301
Relevance	401, 402, 104 (b)
Search & Seizure	
Body intrusions/views	312
Inspections	313
Procedural issues	311
Probable cause required	315
Probable cause not required	314
Seizures	316
Wire taps	317
Speculative (Question invites speculation)	611 (a), 602
Specific instances	608 (b)
Statements, review before testifying	612
Vague Question	611 (a), (c)
Uncharged misconduct	404



**HEARSAY**  
**(Hearsay Defined 801 a-c)**  
**Certain statements excluded by**  
**the definition of hearsay**

Statement	MRE
Admissions by agents	801(d)(2)(C)-(D)
Admissions by party opponent	801(d)(2)(A)-(B)
Prior identification	801(d)(1)(C)
Prior statement by declarant	801(d)(1)(A)-(C)
Statements of co- conspirators	801(d)(2)(E)

**LESS COMMON**  
**HEARSAY EXCEPTIONS**  
**\* requires unavailable declarant**

Exception	MRE
Ancient records	803 (16)
Boundaries	803 (20)
Commercial data	803 (17)
Commercial Publications	803 (17)
*Dying declaration	804 (b)(2)
Family Records	803 (13)
General history	803 (20)
Judgment-personal, family or general history or boundaries	803 (23)
Market reports	803 (17)
Marriage, baptism & similar	803 (12)
Property-Records and statements	803 (14)-(15)
Religious records	803 (11)
Reputation of personal/family history	803 (19)
Residual	807
*Statement of personal/family history	804 (b)(4)
Vital statistics	803 (9)

**COMMON HEARSAY EXCEPTIONS**  
**\* requires unavailable declarant**  
**(Unavailable declarant, defined 804 (a))**

Exception	MRE
Business records	803 (6)
(Absence of business records)	803 (7)
Excited utterance	803 (2)
Existing mental, physical, emotional condition	803 (3)
*Former testimony	804 (b)(1)
Learned treatise	803 (18)
Medical treatment	803 (4)
Present sense impressions	803 (1)
Previous convictions (609)	803 (22)
Public records & reports	803 (8)
(Absence of such record or entry)	803 (7)
Recorded recollection	803 (5)
Records of regularly conducted activity	803 (6)
(Absence of such records)	803 (7)
Reputation as to character	803 (21)
*Statement against interest	804 (b)(3)

*This original of this chart was developed by Lyle Jentzer, Flora Darpino, and Peter Zolper when the three were defense counsel in Stuttgart in 1988.*

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